

Doc Code: AP.PRE.REQ

# PRE-APPEAL BRIEF REQUEST FOR REVIEW

**MAIL STOP AF**

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450

Application Number	<b>09/883,302</b>
Filing Date	<b>June 19, 2001</b>
First Named Inventor	<b>Jeffery Bedell et al.</b>
Art Unit	<b>2164</b>
Examiner Name	<b>S. Rimell</b>
Attorney Docket No.	<b>53470.003004</b>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this appeal.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided

I am the:

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96).

☒ Attorney or Agent of Record 59,853  
(Reg. No.)

☐ Attorney or Agent acting under 37 CFR 1.34.  
Registration No. if acting under 37 CFR 1.34 \_\_\_\_\_



Signature

Christopher M. Swickhamer

Typed or printed name

703-714-7455

Requester's telephone number

September 4, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 09/883,302 Confirmation No.: 9726  
Applicant : Jeffrey Bedell et al.  
Filed : June 19, 2001  
Title : System and Method for Syntax Abstraction in Query Language  
Generation  
TC/Art Unit : 2164  
Examiner: : S. Rimell  
Docket No. : 53470.003004  
Customer No. : **21967**

**MAIL STOP AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the Official Gazette, Applicant hereby requests a pre-appeal brief conference in the above-referenced case.

The Office Action of June 4, 2007 ("Latest Action") finally rejects claims 1-24 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Pat. No. 6,442,557 to Buteau *et al.* ("Buteau"). Applicant respectfully traverses these rejections.

**I. The Action is replete with inconsistencies and shifting rejections thus making the finality of the rejection improper**

Throughout the various Office Actions, the Office has taken many inconsistent positions and made numerous shifting rejections that make the finality of this rejection premature and improper as the Office has not established that Buteau anticipates claims 1-24 under 35 U.S.C. § 102(e).

First, on page 4 of the Office Action of August 18, 2006 ("August 18<sup>th</sup> Action"), the Office takes the position that the "the syntax pattern selector is readable on the query." See

August 18<sup>th</sup> Action, page 4. Contrarily, the Latest Action that makes the rejection final takes the position that the “syntax pattern selector module is the database program.” See Latest Action, page 2. Thus, the Office initially takes the position that the claimed syntax pattern selector module is anticipated by the query of Buteau, and then modifies this position and states that the claimed syntax pattern selector module is anticipated by the database program of Buteau.

Second, the August 18<sup>th</sup> Action states that a “query functions to retrieve results, the results being the selected syntax pattern.” See August 18<sup>th</sup> Action, page 4. Contrarily, the Latest Action that makes the rejection final takes the position that the “SQL standard query . . . is the selected syntax pattern selected by the program.” See Latest Action, page 2. Thus, the Office initially takes the position that the claimed selected syntax pattern is anticipated by the results of the query of Buteau, and then modifies this position and states that the claimed selected syntax pattern is anticipated by the SQL standard query of Buteau.

Third, the Office Action of March 10, 2006 (“March 10<sup>th</sup> Action”) takes the position that the claimed desired function is anticipated by the SELECT command of Buteau. See March 10<sup>th</sup> Action, page 4, stating that “the ‘select’ command is the desired function.” The Latest Action also takes this position. See Latest Action, page 2. Contrarily, the March 10<sup>th</sup> Action states that the claimed desired data set is anticipated by the “select” command of Buteau. See March 10<sup>th</sup> Action, page 4, citing “Figure No. 9 and corresponding text, i.e. “select” command. Moreover, the March 10<sup>th</sup> Action takes the position that the claimed one or more query language statements are anticipated by the “select” command of Buteau. See March 10<sup>th</sup> Action, page 4, citing “Figure No. 9 and corresponding text, i.e. ‘select,’ ‘from’ and ‘where’ commands.” Thus, the Office takes the position that the SELECT command of Buteau may be used to anticipate all of the claimed desired function, the claimed desired data set, and the claimed one or more query

language statements. Claim 1 recites, however, “a statement assembly module for populating the syntax pattern in an automated process with an argument data set associated with *a desired data set* provided to the statement assembly module *as part of the process of generating the one or more query language statements*” (emphasis added). Thus, the Office is taking the position that the “select” command of Buteau is a part of the process of generating the “select” command. The Office’s position that the “select” command of Buteau is used to generate the “select” command, however, does not make sense.

For at least the three reasons set forth above, it is clear that the Office has taken many inconsistent and irreconcilable positions in rejecting the claims. It is apparent that the Office is not giving effect to each claim element recited in the claims. Therefore, the finality of this rejection is premature and improper as the Office has not established that Buteau anticipates claims 1-24 under 35 U.S.C. § 102(e).

## **II. The Latest Action Improperly finds that Buteau does not include a Requirement for Recompilation**

Page 18 of the response filed February 28, 2007 (“February 28<sup>th</sup> Response”) argued that the August 18<sup>th</sup> Action failed to show that Buteau anticipated “wherein the system does not need to be recompiled as a result of defining the syntax pattern,” as recited in claim 21. The February 28<sup>th</sup> Response stated that Buteau did not discuss compilation, and hence the Office had not shown that Buteau did not require recompilation. See February 28<sup>th</sup> Response, page 18.

In response, the Latest Action states that the argument “that Buteau does not teach any manner of compilation . . . contradicts the language invoked in claim 21.” See Latest Action, page 3. The Latest Action further states that “[s]ince Buteau does not contain any requirement for recompilation, it meets the negative limitation of not having such a requirement.” See Latest

Action, page 3. The Latest Action also states that the “SQL standard query . . . is the selected syntax pattern.” See Latest Action, page 2. Thus, the Action appears to be implying that the SQL standard query of Buteau does not need to be recompiled as a result of being defined. Applicant respectfully disagrees.

Buteau’s failure to discuss when the SQL standard query of Buteau is compiled does not somehow imply that the SQL standard query is not recompiled as a result of being defined. 35 U.S.C. § 102 states that a “person shall be entitled to a patent unless . . . the invention was described in . . . a patent granted on an application for patent by another.” Thus, the burden is on the Office to show that SQL standard query of Buteau is not recompiled after being defined in a manner similar to that recited in claim 21.

Buteau does not, however, discuss when anything is compiled. Applicant’s argument that Buteau does not discuss compilation points out that the Office has not shown that the SQL standard query of Buteau is not recompiled, and hence the Office cannot assert that the SQL standard query of Buteau is not recompiled after being defined because Buteau does not discuss when anything is compiled. Thus, the Office has not met its burden by showing that Buteau anticipates “wherein the system does not need to be recompiled as a result of defining the syntax pattern,” as recited in claim 21.

Therefore, for at least the reasons set forth above, the Office has not met its burden of establishing anticipation of claim 21 under 35 U.S.C. § 102 and Applicant respectfully requests that the rejection be withdrawn.

Accordingly, all of claims 1-24 are allowable over Buteau and Applicant respectfully requests that the next Action indicate as such.

**CONCLUSION**

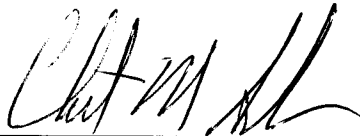
It is anticipated that the present amendments will place the case in condition for allowance.

Based on the foregoing, a Notice to that effect is respectfully solicited. Reconsideration and allowance of all claims are respectfully requested. If any issues remain after consideration of this Amendment, Examiner Rimell is respectfully requested to contact the undersigned by telephone (703-714-7455) so that these issues can be resolved by Examiner's Amendment or a Supplemental Response.

Applicants believe no fees are due with this submission. In the event any fees are due, please charge or credit any such variance to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP



Date: **September 4, 2007**

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